

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT MONTENEGRO,

Petitioner,

v.

No. CV 14-0173 MV/LAM

STEVE NANCE, Warden,

Respondent.

**ORDER ADOPTING PROPOSED FINDINGS AND RECOMMENDED DISPOSITION
AND
ORDER TO ANSWER AMENDED PETITION**

THIS MATTER is before the Court on Magistrate Judge Lourdes A. Martínez' *Proposed Findings and Recommended Disposition* (Doc. 10) (hereinafter, "PF&RD"), filed on October 24, 2014. In the PF&RD, the Magistrate Judge recommended that Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Doc. 2) be dismissed without prejudice on the grounds that all of the claims raised in the petition have not been exhausted. [Doc. 10 at 12-13]. The Magistrate Judge found that Petitioner had exhausted the following claims raised in the Petition [Doc. 2]: (1) that there was insufficient evidence upon which to convict him; (2) that he was wrongly convicted in violation of the principle of double jeopardy; and (4) and that his trial counsel was ineffective for (a) failing to prepare a defense, (b) waiving Petitioner's right to a speedy trial without Petitioner's consent, and (d) failing to properly cross examine witnesses. *Id.* at 13. The Magistrate Judge instructed Petitioner that, if he wishes to proceed solely on the claims the Court has found to be exhausted, he must file an amended petition which includes only these exhausted claims. *Id.*


To date, no party has filed objections to the PF&RD, and the deadline for filing objections has passed. On November 10, 2014, Petitioner filed an Amended Petition [*Doc. 11*], which includes only his exhausted claims. See [*Doc. 11* at 2]. The Court has determined that it will adopt the *Proposed Findings and Recommended Disposition* (*Doc. 10*), dismiss Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (*Doc. 2*) without prejudice, and order Respondent to file a response to the Amended Petition [*Doc. 11*].

IT IS THEREFORE ORDERED that the *Proposed Findings and Recommended Disposition* (*Doc. 10*) are **ADOPTED** by the Court.

IT IS FURTHER ORDERED that Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (*Doc. 2*) is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that Respondent shall file a response to Petitioner's Amended Petition [*Doc. 11*] **no later than thirty (30) days after the entry of this order.**

IT IS SO ORDERED.



HONORABLE MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE